Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Calling Party Pays Service Offering	)	WT Docket No. 97-207
in the Commercial Mobile Radio Services	)	
	)	

REPLY COMMENTS OF PILGRIM TELEPHONE, INC.

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Executive Summary

The record in response to the *CPP Rulemaking Notice* provides the Commission with strong support for moving forward with the actions necessary to give Calling Party Pays a fair test in the telecommunications marketplace. Parties representing a range of interests and points of view have found common ground in agreeing that CPP has the potential to benefit consumers, promote competition in local exchange and wireless markets, and serve other public policy objectives.

Commenting parties have also presented convincing evidence and arguments demonstrating that CPP simply cannot be fairly tested in the marketplace unless the Commission takes the steps necessary to ensure that billing and collection services provided by local exchange carriers are available for CPP at reasonable rates and on reasonable terms and conditions. Many parties have shared Pilgrim's view that LEC billing and collection is critical to CPP because the deficiencies of other alternatives would severely impede the ability of CPP providers to bill and collect for their service, thus threatening the viability of CPP and jeopardizing the consumer and competitive benefits that CPP promises to promote.

Given the inadequacy of these alternatives, and the power that LECs exercise in the market for CPP billing and collection, the Commission has a firm policy basis for requiring that these capabilities must be made available to CPP providers, and the Commission can do so without disturbing its earlier decisions regarding the detariffing of LEC billing and collection services in other markets.

The need for Commission action to require LEC billing and collection is made more compelling by the fact that opponents have fallen far short in their efforts to dissuade the Commission from such a course. They have almost uniformly failed to address facts and arguments that demonstrate the lack of any alternatives to LEC billing and collection for CPP, nor have they considered it necessary to put any information or evidence in the record regarding the costs that LECs would incur if required to provide billing and collection. If opponents of LEC billing and collection believe that the Commission should turn away from such a requirement because it would impose excessive costs upon LECs, or because LECs would be hampered in their efforts to recoup these costs, then these opponents should come forward with facts and figures proving their case. Instead, they have been satisfied with a virtually empty record.

The Commission's interest in protecting consumers by providing sufficient notification of pricing and other information to calling parties has also gained substantial support in the record, with many parties recognizing the benefits to be gained for consumers by the provision of complete and accurate rate information to calling parties before they complete calls to CPP subscribers. Parties who support lesser measures to inform calling parties of the fact that they are calling CPP subscribers and will incur charges for the calls, have failed to explain why the Commission should place consumer protection at risk by opting for the various "streamlined" notification approaches these parties advocate.

Pilgrim also supports the cooperative efforts of Commission and State public utilities commission staff to develop a standardized text that could be used in connection with the Commission's proposed notification requirement. This proposed text, which is similar to options presented by Pilgrim in our comments, would ensure that calling parties uniformly receive pricing and other information pertinent to their making informed consumer choices. Pilgrim also sug-

gests that the standardized text should be used as a "safe harbor" to secure compliance with the Commission's notification requirements, but that carriers also be given flexibility to add to the announcement to advise the calling party of different billing options or the availability of enhanced services (such as voicemail) to contact the CPP subscriber if he or she is not available to answer the call.

The Commission should not proceed, however, with any steps to shackle CPP providers with regard to their pricing for CPP services. The objective of these providers to stimulate traffic on their systems through the successful introduction and implementation of CPP gives them sufficient incentive to price their offerings in a manner that will gain marketplace acceptance. In the unlikely event that these incentives do not prove to work sufficiently, the Commission can later examine steps it may take to ensure reasonable pricing for CPP offerings.

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Pilgrim Telephone, Inc. (Pilgrim), by counsel, and pursuant to Section 1.415 of the Commission's Rules,[1] and a Notice of Proposed Rulemaking in the above-captioned proceeding,[2] hereby submits its reply comments.

I. INTRODUCTION

Calling Party Pays (CPP) provides the Commission with an opportunity to take a significant step in advancing its efforts to promote competition between wireless and wireline carriers in the local exchange marketplace as well as other statutory objectives.

Congress, in enacting the Telecommunications Act of 1996,[3] sought to establish a pro-competitive, deregulatory national policy framework designed to accelerate the delivery of inno-

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[1] 47 C.F.R. § 1.415.

[2] Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 99-137, released July 7, 1999 (*CPP Rulemaking Notice*). The proceeding was initiated by the Commission two years earlier. *See* Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207, Notice of Inquiry, 12 FCC Rcd 17693 (1997) (*CPP Notice of Inquiry* or *NOI*).

vative technologies and services to American consumers by promoting competition in all telecommunications markets.[4]

The Commission has noted that competition in local exchange markets is "desirable not only because of the benefits competition will bring to consumers of local services, but also because competition will eventually eliminate the incumbent [local exchange carriers'] control of bottleneck facilities and thereby permit freer competition in other telecommunications services that must interconnect with the local exchange." [5]

Calling Party Pays fits into this competitive mosaic. A legion of commenters responding to the *CPP Rulemaking Notice* has agreed with the Commission's tentative conclusion that there is a role for CPP to play in benefiting consumers by breaking the grip of the incumbent local exchange carriers (ILECs) in local markets. The record presents substantial and convincing evi-

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[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act). The 1996 Act amended the Communications Act of 1934 ("Communications Act" or "Act").

[4] *See* Joint Statement of Managers, H.R. CONF. REP. NO. 104-458, 104th Cong., 2d Sess. 113 (1996). *See also* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15505 (para. 1) (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom.* Competitive Telecom. Ass'n v. Federal Comm. Comm'n, 117 F.3d 1068 (8th Cir. 1997), *aff'd in part and vacated in part sub nom.* Iowa Utils. Bd. v. Federal Comm. Comm'n, 120 F.3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part, and remanded sub nom.* AT&T v. Iowa Utils. Bd., 119 S.Ct. 721 (1999), Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12460 (1997), *appeals docketed*, Second Further Notice of Proposed Rulemaking, FCC 99-70, released Apr. 16, 1999 (*UNE Further Notice*).

[5] Promotion of Competitive Networks in Local Telecommunications Markets and Implementation of Local Competition Provisions in the Telecommunications Act of 1996, WT Docket No. 99-217, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking, FCC 99-141, released July 7, 1999, at para. 2 (footnote omitted).

dence that wireless carriers can use CPP as an important tool to promote their strategies of entry into local exchange markets.

But the record also brings into sharp definition the fact that CPP simply cannot work in the marketplace without LEC billing and collection services. If the Commission decides (as it must on this record) that CPP deserves a fair test in the marketplace because it has a strong potential to advance competition and benefit consumers, but then decides to refrain from requiring LECs to provide billing and collection, then the Commission's second decision will swallow up the first.[6]

Pilgrim believes that the record supports a series of conclusions that clear the path for the Commission to require that LECs must make their billing and collection services available to Commercial Mobile Radio Service (CMRS) carriers for use in connection with offering CPP. The Commission has ample statutory authority to take such a step, and it can invoke this authority without disturbing its earlier decisions to deregulate LEC billing and collection.

Further, the record provides abundant support for a conclusion by the Commission that requiring the provision of LEC billing and collection constitutes sound public policy. There are no credible arguments that the LECs do not have the capabilities needed to provide billing and collection for CPP, and opponents of such a requirement have utterly failed to present any arguments or evidence to support their speculative views that CMRS carriers can turn to other alternatives to bill and collect for CPP.

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[6] *See Local Competition Order*, 11 FCC Rcd at 15509 (para. 12) ("[O]ur obligation . . . is to establish rules that will ensure that all pro-competitive entry strategies may be explored. As to success or failure, we look to the market, not to regulation, for the answer.").

Moreover, the opponents of LEC billing and collection requirements have refused to come forward with any evidence or persuasive arguments to support their conclusory assertions that the provision of billing and collection services would impose substantial burdens and costs upon the LECs, or that the LECs would face the significant risk of being unable to recoup these costs. Pilgrim believes, to the contrary, that the Commission should establish mechanisms designed to ensure that LECs are not able to leverage their market power to extract excessive payments from CMRS providers for the LECs' billing and collection services.

In addition to LEC billing and collection, another key ingredient for the success of CPP in the marketplace is a workable calling party notification system that enables consumers to make informed choices while also avoiding any unnecessary requirements or regulatory burdens that would hamper the introduction or operation of CPP services. The Commission proposed such a system in the *CPP Rulemaking Notice* and the record now provides a solid basis of support for moving forward to prescribe and implement the notification mechanisms the Commission has designed. The record also provides strong support for the conclusion that the Commission would be ill-advised to attempt to supplement or replace its proposed calling party notification system with any other devices, such as the use of unique access codes or dialing patterns for CPP, that would provide inadequate notice to consumers and the use of which would be inconsistent with other Commission policies.

Finally, Pilgrim believes that, just as the Commission can rely on the marketplace to test the worth of CPP once the Commission clears away impediments sought to be erected by ILECs who have a vested competitive interest in putting their thumbs on the scale of this marketplace test, the Commission can also rely on the marketplace to produce reasonable CPP rates that will not disadvantage calling parties. In this regard, Pilgrim agrees with the many commenters who

suggest that it would be premature and ill-considered for the Commission to take up the task of regulating CPP rates.

II. THE BENEFITS OF ENABLING CALLING PARTY PAYS TO BE TESTED IN THE MARKETPLACE OUTWEIGH THE RISKS

Pilgrim believes that the Commission, in initiating this rulemaking, has taken on the responsibility of making a series of judgments about Calling Party Pays. Initially, the Commission must determine if CPP has the potential to benefit consumers and competition. Next, the Commission must resolve whether any regulatory action is necessary to enable wireless carriers to offer CPP. The Commission then must evaluate the nature and extent of any countervailing burdens that could be imposed on any segments of the telecommunications industry by the Commission's taking action. Finally, the Commission must assess whether CPP could be detrimental to any classes of consumers, and whether regulatory action could effectively protect these consumers from harm.

In framing its public interest judgment, the Commission must complete its analysis by reaching conclusions about each of these various considerations and then deciding whether the benefits or the costs of CPP weigh heavier in the scales. It is important to recognize and emphasize that this is a comparative process — if the "downside" risks of fostering the introduction of CPP are not great, then the degree of the Commission's certitude that CPP will succeed in the marketplace and benefit competition and consumers does not need to be as great.

Pilgrim believes that the "risk" side of the equation is not problematic. The Commission can point to considerable evidence in the record that LECs will not be disadvantaged by a requirement to provide billing and collection for CPP. Further, the Commission has proposed ef-

fective consumer safeguards, the adoption of which will ensure that consumers can make informed decisions regarding whether to incur or avoid charges associated with CPP.

All of this goes to say that the Commission does not need to clear a high hurdle in order to conclude that the potential benefits of CPP are worth pursuing. While it is true that no one can be certain regarding whether CPP will succeed in the marketplace, the record in response to the *CPP Rulemaking Notice* supports a reasoned judgment by the Commission that the public interest will be served by enabling the marketplace test to go forward.

III. CALLING PARTY PAYS WILL PROMOTE COMPETITION AND BENEFIT CONSUMERS

Pilgrim believes that the evaluative task facing the Commission in this rulemaking is made considerably easier by the fact that the record buttresses the reasonableness of a predictive judgment that CPP will promote competition and benefit consumers. There is overwhelming support in the record for the introduction of CPP services.[7] Parties have recognized that CPP has

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[7] *See, e.g.*, American Association of Retired Persons (AARP) Comments at 6 (CPP is "an idea whose time has come."); AirTouch Communications (AirTouch) Comments at 6; America One Communications (America One) Comments at 2 (CPP provides an opportunity for CMRS providers to offer competitive alternatives to LECs' local services); AT&T Corp. (AT&T) Comments at 1; Cable & Wireless USA, Inc. (Cable & Wireless) Comments at 2 (the CPP option would be beneficial to CMRS subscribers; the Commission's goal of creating a CMRS option that would make wireless service more competitive with wireline service is laudable); Cellular Telecommunications Industry Association (CTIA) Comments at 2-3; Celpage, Inc. (Celpage) Comments at 4; Cincinnati Bell Telephone Company (Cincinnati Bell) Comments at 2; Coalition To Ensure Responsible Billing (Billing Coalition) Comments at 2; Competitive Policy Institute (CPI) Comments at 2; Connecticut Department of Public Utility Control (Connecticut DPUC) Comments at 1; GTE Service Corporation (GTE) Comments at 1; MCI WorldCom (MCIW) Comments at 1; Motorola Inc. (Motorola) Comments at 2-3; National Telephone Cooperative Association (NTCA) Comments at 1; Nextel Communications, Inc. (Nextel) Comments at 2; Omnipoint Communications (Omnipoint) Comments at 2; Personal Communications Industry Association (PCIA) Comments at 1; Rural Telecommunications Group (RTG) Comments at 2; Telecommunications Resellers Association (TRA) Comments at 4; United States Cellular Corporation (USCC) Comments at 1; VoiceStream Wireless Corp. (VoiceStream) Comments at 2-3.
(continued . . .)

the potential to change the manner in which consumers use wireless services. In fact, PCIA has placed evidence in the record that CPP has been shown to promote greater usage of wireless handsets, that CPP customers are more willing to give out their mobile phone numbers, and that CPP has been well received by wireless customers.[8]

We agree with claims made by commenters that CPP is an innovative service that has the potential to accelerate the continuing transformation of mobile telephony into a service that appeals to a broader cross-section of consumers,[9] to stimulate greater usage of wireless services,[10] to offer consumers lower prices and more choice in the telecommunications marketplace,[11] to increase wireless penetration into local exchange markets in competition with ILECs,[12] to offer an appealing alternative mobile service to consumers with lower incomes,[13] and to lead to "a more equitable balance of calls to and from wireless telephone customers."[14] We also agree with

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See also Global Wireless Consumers Alliance (GWCA) Comments at 1 (unpaginated) (does not oppose the concept of CPP); United States Telephone Association (USTA) Comments at 1 (does not oppose voluntary CPP arrangements); Utility Consumers Action Network (UCAN) Comments at 1 (unpaginated) (does not oppose concept of CPP).

[8] PCIA Comments at 10.

[9] *See* AirTouch Comments at 6.

[10] *See* Motorola Comments at 3; CTIA Comments at 6 (CPP will create an incentive for the publication of mobile numbers, thus expanding the universe of numbers calling parties can call).

[11] *See* PCIA Comments at 9.

[12] *See* AirTouch Comments at 6; America One Comments at 2; Connecticut DPUC Comments at 1; CPI Comments at 3; PCIA Comments at 11.

[13] *See* CTIA Comments at 2-3.

[14] *See* PCIA Comments at 14.

AirTouch that associating airtime charges with the calling party, *i.e.*, the cost causer, promotes economic efficiency,[15] and will thus promote price reductions and other consumer benefits.

CTIA puts the case for CPP squarely, arguing that "CPP has the ability to empower consumers. It places decision-making responsibility and control within the hands of consumers — both calling and called parties."[16] CTIA notes, for example, that wireless subscribers who select CPP using Advanced Intelligent Network (AIN) technology, will have the option to designate a Personal Identification Number (PIN) code which the subscriber can distribute to preferred callers, to permit call completion without the calling party being billed. Subscribers will also be able to designate a pre-selected group of preferred phone numbers from which the called party will pay for the call. Finally, subscribers will have the option to use a toggle capability in the handset to turn the CPP function on or off.[17] Thus, CPP can be designed in a manner that gives substantial flexibility to CPP subscribers, and this flexibility will work to meet the needs of both subscribers and calling parties.

Parties attempting to persuade the Commission to turn its back on CPP have neither evidence nor reasonable arguments to support their importunities. Some commenters argue, for example, that the wireless industry has been marked by robust growth and that this fact, by itself, should compel the Commission to forego the potential benefits of CPP.[18] It is difficult to credit

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[15] *See* AirTouch Comments at 8. *But see* Texas Office of Public Utility Counsel, Consumer Federation of America, Consumers Union (Joint Parties) Comments at 5, 12.

[16] CTIA Comments at 5.

[17] *Id.* at 5-6.

[18] *See, e.g.*, BellSouth Corporation (BellSouth) Comments at 10, 13-14; Florida Public Service Commission (Florida PSC) Comments at 2; Joint Parties Comments at 2.

such an argument, since it seems to rest on the misplaced notion that it would be sound and acceptable public policy for the Commission to relax its efforts to enhance competition and consumer welfare.

Pilgrim believes that a better public policy requires just the opposite — any new services that hold the potential to benefit consumers and competition deserve to be tested because it is through such a process of technological and service innovation, and verdicts in the marketplace, that the benefits of competition can be sustained and expanded. The Commission in fact has a statutory responsibility to take actions that are necessary or appropriate to encourage new services that have the potential to promote competition and consumer benefits.[19] Opponents of CPP have not proven their case that the Commission should ignore the opportunity to realize the potential of CPP.

Some commenters also have argued that the Commission should not rely upon the performance of CPP in Europe, Latin America, and elsewhere as a basis for concluding that CPP would produce similar beneficial effects in the American telecommunications marketplace.[20] As is often the case in attempting such comparisons and in trying to make predictive judgments regarding marketplace operations and effects, there is room for debate and reasonable disagreement regarding the relevance of the performance of CPP in foreign markets. In Pilgrim's view, the case studies presented by PCIA make a convincing showing to support PCIA's conclusion that CPP has been implemented successfully throughout Europe and Latin America and elsewhere around

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[19] *See, e.g.*, Section 7(a) of the Act, 47 U.S.C. § 157(a) ("It shall be the policy of the United States to encourage the provision of new technologies and services to the public.").

[20] *See, e.g.*, Joint Parties Comments at 17; US West Communications (US West) Comments at 9.

the globe, and that CPP can stimulate demand, result in more balanced traffic flows, and make mobile phone service more competitive with landline services.[21]

Even if the Commission were to conclude, however, that differences between foreign and domestic telecommunications markets make comparisons difficult, it would seem that there is at least some probative value to the fact that CPP has performed well in other countries. In any event, Pilgrim believes that, regardless of whether the Commission chooses to draw any inferences from the performance of CPP in foreign markets, there is a sufficient independent basis in the record for the Commission to conclude that regulatory action is warranted to ensure that CPP is fairly tested in the domestic marketplace.

IV. CALLING PARTY PAYS WILL NOT WORK UNLESS THE COMMISSION REQUIRES LOCAL EXCHANGE CARRIERS TO PROVIDE BILLING AND COLLECTION SERVICES

Pilgrim believes, and is joined by many other commenters in arguing, that the Commission will be sentencing CPP to failure in the marketplace if the Commission refuses to require LECs to provide billing and collection for CPP. There are substantial arguments supporting this conclusion, and these arguments stand in telling contrast to the failure by CPP opponents to contend with, or even acknowledge, some of the most problematic difficulties that would face CMRS carriers if they sought to provide CPP without having access to LEC billing and collection services.

We first discuss the basis for the Commission's regulatory authority to exercise its ancillary jurisdiction to require LECs to make billing and collection available for CPP, and we dem-

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[21] *See* PCIA Comments at 12, 15-22.

onstrate that opponents of this approach have failed to mount any serious challenge to the Commission's authority.

Next, we examine how the record has now provided compelling support for the exercise of the Commission's ancillary jurisdiction. Commenters have presented substantial evidence and arguments that the LECs, largely by dint of their local exchange monopolies, are well positioned to make effective billing and collection services available to CPP providers; that there is no basis for concluding that CMRS carriers could rely upon alternative billing and collection mechanisms for their CPP offerings; and that a Commission requirement that LECs provide billing and collection would not lead to any unwarranted costs or burdens that would make such a requirement inadvisable or contrary to the public interest.

Finally, we explain our support for those comments that suggest that Section 251 of the Act[22] provides an alternative source of Commission authority for facilitating a fair market test for CPP. There are strong reasons buttressing a Commission conclusion that ILECs should be required to provide billing and collection services to CPP providers as unbundled network elements (UNEs) pursuant to the requirements of Section 251.

A. The Commission Should Exercise Its Ancillary Jurisdiction To Require Local Exchange Carriers To Provide Billing and Collection

Although some parties have ineffectually endeavored to suggest that the Commission does not have a legal basis for exercising its ancillary jurisdiction to require LEC billing and collection, there can be little doubt, based upon judicial precedent, the Commission's own decisions, and the record of this proceeding, that a statutory framework is in place that will enable the

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[22] 47 U.S.C. § 251.

Commission to establish such a billing and collection requirement. Moreover, the record demonstrates that the facts surrounding the CPP case present compelling public policy reasons for the Commission to utilize its statutory authority to require LEC billing and collection.

1. The Commission Has Sufficient Statutory Authority To Exercise Its Ancillary Jurisdiction in this Case

Pilgrim demonstrated in our comments in this proceeding[23] that the Commission established a blueprint in the *Billing and Collection Order*[24] for the criteria under which the Commission would find it necessary to utilize its ancillary jurisdiction to require LECs to provide billing and collection services, that those criteria are met by the case presented by CPP, that the CPP case can be distinguished from earlier Commission decisions that refused to exercise the agency's ancillary jurisdiction to require LEC billing and collection, and that the decision here to provide access to LEC billing and collection for CPP providers can be effected in a manner that would not require the *Billing and Collection Order* to be overturned.

As Pilgrim observed in our comments,[25] the Supreme Court has determined that the Commission may exercise its ancillary jurisdiction under the Communications Act to the extent that doing so "is imperative if [the Commission] is to perform with appropriate effectiveness certain of its other responsibilities."[26] The Commission has found that "[t]he exercise of ancillary

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[23] *See* Pilgrim Comments at 14-33.

[24] Detariffing of Billing and Collection Services, CC Docket No. 85-88, Report and Order, 102 F.C.C.2d 1150 (1986) (*Billing and Collection Order*), *recon. denied*, 1 FCC Rcd 445 (1986).

[25] Pilgrim Comments at 14-15.

[26] United States v. Southwestern Cable, 392 U.S. 157, 173 (1968), *cited in* Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, Access to Telecommunications Services, Telecommunications

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jurisdiction requires a record finding that such regulation would 'be directed at protecting or promoting a statutory purpose.'"[27] Parties addressing the ancillary jurisdiction issue have lent considerable support to the arguments presented by Pilgrim in our response to the *CPP Rule-making Notice* regarding the Commission's authority to invoke ancillary jurisdiction and the policy reasons for doing so in this case.[28] In addition, AirTouch, in recommending that the Commission should adopt a simple, enforceable rule that prohibits ILECs from refusing to offer billing and collection services for CPP on just, reasonable, and non-discriminatory terms, demonstrates that the Commission could issue such a rule without reversing the *Billing and Collection Order* or altering its view that billing and collection does not constitute a common carrier service.[29]

Equipment and Customer Premises Equipment by Persons with Disabilities, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, FCC 99-181, released Sept. 29, 1999 (*Section 255 Order*), at para. 95 & n.220.

[27] *Billing and Collection Order*, 102 F.C.C.2d at 1170 (para. 37) (quoting Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Docket No. 20808, Final Decision, 77 F.C.C.2d 384, 433 (para. 126) (1979)).

[28] *See* AirTouch Comments at 27-29; America One Comments at 9; Billing Coalition Comments at 12; Nevadacom Inc. (Nevadacom) Comments at 4 (Commission should invoke ancillary jurisdiction to prevent LECs from unreasonably terminating or modifying billing and collection agreements with clearinghouses); VoiceStream Comments at 8. *See also* PCIA Comments at 48-50 (requiring the LECs to provide billing and collection for CPP would not be inconsistent with the *Billing and Collection Order*).

[29] See AirTouch Comments at 10-11, 21-25. AirTouch argues that the Commission should take an approach similar to an action it took regarding the provision of billing and collection services by cable system operators. *Id.* at 10 (citing Implementation of Sections of the Cable Television and Consumer Protection Act, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631, 5943-45 (paras. 14-15) (1993)). In that proceeding, the Commission required cable operators (who are not classified as common carriers) to provide billing and collection to leased access programmers unless the operators could demonstrate the existence of third party billing and collection services which, in terms of cost and accessibility,

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In evaluating whether it should invoke its ancillary jurisdiction in this rulemaking, the Commission must answer two central questions. First, does the ability of CMRS carriers to offer CPP in the marketplace have the potential to protect or promote any statutory purposes? Second, in order for CMRS carriers to have such an opportunity, is it necessary for the Commission to establish any rules or requirements pursuant to its ancillary jurisdiction?

In our earlier discussion,[30] and in our comments responding to the *CPP Rulemaking Notice*,[31] we have demonstrated that CPP has the potential to advance a number of statutory purposes. We believe that other parties have joined to provide a strong record supporting the conclusion that Commission rules facilitating the offering of CPP can be firmly grounded in the advancement of statutory objectives.[32] In the following sections we will return in greater detail to the second question; Pilgrim believes that it has been evident from the outset that CPP cannot enter the marketplace as a viable service offering unless CMRS carriers have the option of utilizing LEC billing and collection services to offer CPP. The Commission now has the benefit of a record that is abundant with facts and arguments proving this case. Equally compelling is the fact that there is absent from the record any credible attempt to CPP opponents to counter these facts and arguments.

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offered leased access programmers an alternative substantially equivalent to that offered by the cable operators for comparable non-leased programming.

[30] See Section III, *supra*.

[31] *See* Pilgrim Comments at 16-22 (illustrating that CPP has the potential of promoting and protecting statutory objectives by increasing local exchange competition, enhancing wireless marketplace competition, and promoting spectrum efficiency).

[32] *See, e.g.*, note 7, *supra*, and accompanying text.

Before turning to our discussion of the policy reasons compelling a LEC billing and collection requirement, however, we would first like to underline the fact that the opponents of such a requirement have completely failed to come forward with any arguments that would adequately support a conclusion that the Commission lacks authority to invoke its ancillary jurisdiction as a means of securing a fair and effective marketplace test for CPP services.

BellSouth, for example, seeks to convince the Commission that Section 332 of the Act[33] erects a bar to the Commission's exercise of ancillary jurisdiction because billing and collection is a term or condition of CMRS which may be regulated by the States pursuant to Section 332(c)(3).[34] BellSouth's argument apparently is that Section 332 gives the States authority to regulate the manner in which a *CMRS carrier* bills and collects for CPP (because billing and collection is a term or condition of CPP), and, therefore, a Commission requirement that *local exchange carriers* make billing and collection available for CPP would intrude upon the States' prerogatives to regulate CPP billing and collection.

BellSouth does not make a convincing case for its reading of Section 332. As CTIA has observed (in its analysis of the Commission's authority to impose uniform national notification standards), "before the Commission may determine that states possess authority over particular terms and conditions of CPP service pursuant to Section 332(c)(3)(A), it must first determine whether the terms at issue are rate- and entry-related."[35] Thus, if a "term or condition" such as

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[33] 47 U.S.C. § 332.

[34] BellSouth Comments at 6.

[35] CTIA Comments at 12.

billing and collection is considered to be rate- or entry-related, then it becomes a term or condition that is beyond the scope of State regulatory authority reserved in Section 332.

In this regard, Pilgrim agrees with AT&T that CPP should be classified as a CMRS rate "because CPP plans change the structure and incidence of charges for wireless calls."[36] Such a classification would in turn treat billing and collection as a rate-related term or condition, which would not be subject to State regulation under Section 332. Moreover, we believe that billing and collection is also an entry-related term or condition because a failure to provide LEC billing and collection would adversely affect the introduction of CPP and would thus constitute a barrier to entry.[37] Under the analysis suggested by CTIA, treating billing and collection as an entry-related term or condition also takes it outside the reach of State jurisdiction under Section 332.[38]

Finally, even if it were to be conceded *arguendo* that BellSouth is correct in asserting that a Commission requirement that LECs must provide billing and collection for CPP is somehow proscribed by Section 332 because it would conflict with authority reserved to the States under that section, then, for the reasons Pilgrim explained in our comments, the Commission would still have a basis for preempting this State authority.[39]

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[36] AT&T Comments at 3 (citing AT&T v. Central Office Telephone, 118 S.Ct. 1956, 1963 (1998)).

[37] *See* AirTouch Comments at 26; PCIA Comments at 52.

[38] We reiterate the position taken in our comments that we do not believe that Section 332 serves as a basis for Commission authority to impose LEC billing and collection requirements. Pilgrim Comments at 37-38. Our point here is that, contrary to the claims of BellSouth, Section 332 does not have the effect of *prohibiting* such a Commission requirement.

[39] *See* Pilgrim Comments at 36-37 (citing Public Serv. Comm'n of Maryland v. Federal Comm. Comm'n, 909 F.2d 1510, 1515 (D.C.Cir. 1990)). *See also* CTIA Comments at 16-20 (illustrating that "impossibility" precedent under Section 2(b) of the Act, 47 U.S.C. § 152(b), would be a (continued . . .)

BellSouth also attempts to argue that an exercise of ancillary jurisdiction in this case would be against Commission precedent because the competitive pressures that led the Commission to detariff billing and collection in the *Billing and Collection Order* also exist in the case of CPP.[40] But, in presenting examples of billing and collection services that purportedly would provide CPP carriers with effective alternatives to LEC billing and collection,[41] BellSouth inexplicably ignores two central issues, namely, that it would be prohibitively expensive for CPP providers to generate separate bills for casual CPP calling parties, and that many of these bills would not be collected.[42] In Pilgrim's view, BellSouth's failure to even acknowledge these two critical aspects of the billing and collection issue speaks for itself.

Other CPP opponents apply an even lighter brush than BellSouth in attempting to persuade the Commission that there is no basis for invoking ancillary jurisdiction. Bell Atlantic, for example, recites the refrain that, since the adoption of the *Billing and Collection Order* thirteen years ago, the Commission has continued to find that LEC billing and collection services are not

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basis for preempting any inconsistent or additional State requirements relating to CPP customer notification). Pilgrim also agrees with the analysis presented by AirTouch that the Commission could adopt a rule requiring LEC billing and collection without interfering with State authority over intrastate local exchange services or the "other terms and conditions" of CMRS. AirTouch Comments at 29. AirTouch suggests that "the Commission's authority over CMRS entry provides sufficient grounds to address LEC billing for intrastate CMRS services." *Id.* Although the States may have concurrent authority to regulate LEC billing and collection, AirTouch argues that the Commission "unquestionably does" have authority to reach LEC billing and collection for intrastate services. *Id.*

[40] BellSouth Comments at 17.

[41] *See id.* at 15-17.

[42] We discuss these issues in Section IV.A.2.b, *infra.*

essential and that there are competitive alternatives for billing and collection in the marketplace.[43]

Bell Atlantic would have the Commission believe that the findings made by the Commission regarding the viability of these alternatives apply with equal force to billing for CPP, ignoring completely the arguments presented in this record that CMRS carriers cannot effectively do their own billing for CPP, nor can they rely on credit card companies, clearinghouses, cable companies, electric utilities, or other third party billing alternatives. If Bell Atlantic chooses to ignore these arguments it cannot expect the Commission to give any weight to Bell Atlantic's cursory efforts to "apply" the *Billing and Collection Order* precedent. Finally, Bell Atlantic continues in this vein by asserting that, "because the Commission has ruled that billing and collection are not common carrier services, [the Commission] would lack the authority" to require LEC billing and collection for CPP.[44] This assertion flies in the face of the Commission finding in the *Billing and Collection Order* that it has authority to regulate LEC billing and collection through an exercise of its ancillary jurisdiction,[45] notwithstanding the Commission's view that billing and collection is not a common carrier service.[46]

US West joins BellSouth and Bell Atlantic in seeking to assure the Commission that there is no need to require LEC billing and collection for CPP. "The suggestion that LEC billing and collection services are necessary for CPP to be successful are [*sic*] incorrect. While such services

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[43] Bell Atlantic Comments at 6.

[44] *Id.* at 7.

[45] *Billing and Collection Order*, 102 F.C.C.2d at 1169 (para. 36).

[46] *Id.* at 1167-69 (paras. 30-34).

might be nice, they are not critical."[47] Pointing to the fact that billing aggregators and clearing-houses "have now come into their own,"[48] US West opines that CMRS carriers have "a multitude of alternatives" available for CPP billing and collection: they can do it themselves; they can "approach LECs" for "negotiated" billing and collection services, they can work with aggregators, or they can contract with credit card vendors. US West concludes optimistically that these alternatives are "obviously present and available."[49]

What is also obvious, in Pilgrim's estimation, is that these alternatives will not work. More to the point for our present purposes, however, is the fact that US West elects not to engage in any examination whatever of the claims in the record that LEC billing and collection is necessary because other means of trying to accomplish billing and collection for CPP will not be effective. This failure by US West is all the more puzzling in light of the fact that the Commission specifically sought comment on the issue.[50] In Pilgrim's view, the decision by US West to refrain from addressing these central issues surrounding whether there is a need for LEC billing and collection makes it difficult for the Commission to embrace US West's view that such billing and collection would be nice but is not critical.

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[47] US West Comments at 19.

[48] *Id.* at 20.

[49] *Id.* at 21.

[50] *CPP Rulemaking Notice* at para. 61 ("[W]e ask whether the offering of CPP would be cost-prohibitive in the absence of incumbent LEC billing and collection services."). *See also id.* at para. 57 (parties argue that direct LEC billing and collection is necessary in order for CPP to be economically viable).